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DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AD28

[Public Notice 8322]

Exchange Visitor Program – Fees and Charges

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: The U.S. Department of State (Department) is revising regulations to increase the Application Fee for Sponsor Designation or Redesignation and the Administrative Fee for Exchange Visitor (J-1 Visa Holder) Benefits assessed for providing Exchange Visitor Program services, in order to recoup the costs incurred by the Department's Bureau of Educational and Cultural Affairs associated with operating the Exchange Visitor Program.

EFFECTIVE DATE: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street, N.W., Washington, D.C. 20522, 202-632-9290, or email at

JExchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on January 30, 2013 (RIN 1400-AD28; 78 FR 6263), with a request for comments, to amend 22 CFR 62.17 (“Fees and Charges”) to increase fees to recover the costs of administrative processing of requests for program designation or redesignation, and certain services for exchange visitor benefits. These costs were calculated by an independent, certified public accounting firm following the guidelines set forth in Office of Management and Budget (OMB) Circular A-25 regarding such fee calculation.

The Department received thirteen comments and is now promulgating a final rule with no changes from the proposed rule. Thus, the application fee charged to U.S. corporate entities will increase to \$3,982.00 for program designation and redesignation. The individual program services fee paid by foreign nationals will increase to \$367.00 for services such as change of program category, program extensions and reinstatements.

Comment Analysis

The Department received thirteen comments. One comment suggested that the Exchange Visitor Program be shut down and the other, from a foreign national, requested assistance on visas and travel. These comments were not responsive to the proposed rule.

Three comments represented the academic community and supported the proposed rule. One commenter stated that the fees should be adopted and believes that the Department cannot prevent abuses to the program if the Office of Designation limits itself, as it does now, to some 13 staff members monitoring more than 1,400 separate and distinct sponsors. Two comments did not object to the increases, but requested that sufficient time be allowed so that academic institutions could properly budget for the 47% increase in the application fee. The Department's fee schedule is reviewed and implemented on a two-year cycle. Delaying the fee increases for all sponsors is not feasible.

In addition, one of the three commenters who expressed support for the proposed rule requested clarification as to whether designation fees paid by private sector program sponsors were also meant to cover the cost of administering U.S. Government exchange programs. Designation fees paid by private sector program sponsors do not currently fund the administration of U.S. Government exchange programs, and the Department does not anticipate that private sector programs would cover the cost of administering such exchange programs in the future.

A total of eight comments oppose the proposed increase in fees. One comment inquired about the purpose of increasing the application fee since the Department has imposed a moratorium on new sponsor applications for the Summer Work Travel category of the Exchange Visitor Program. Once the Department has completed the

comprehensive review of the Summer Work Travel category, it is anticipated that the moratorium will be lifted.

Another comment opposed the increase and stated that the opposition was “due to the Department’s failure to adequately demonstrate its best use of resources and lack of timely and knowledgeable response time to questions and application requests.” According to this commenter, the requirement to provide increased oversight of the Exchange Visitor Program over the last two years has diverted resources away from the administrative processing of stakeholder requests. The increase in fees is designed to facilitate the hiring of additional staff to manage the administrative workload in a timely fashion, increase the Office of Designation’s efficiency and enhance the office’s customer service. Five commenters opposed the proposed administrative fee and noted the impact it will have on au pair participants wishing to extend their program beyond the twelve-month maximum duration. The Department designed the administrative fee to recoup the cost to the Department of processing the action for the participant, regardless of category.

Finally, one commenter opposed the fee structure and questioned whether applications for designation and redesignation undergo the same level of review. The commenting party also noted that both large and small sponsors are charged the same application fee, and suggested that the fee structure be based on program size. The Department recognizes that, in general, processing designation and redesignation

applications does not require the same level of review. The Department also recognizes that there is an on-going relationship between the parties once a sponsor becomes designated. This relationship involves program monitoring, responding to sponsor inquiries, processing of requests whose costs are not recouped through administrative fees, and other activities, all of which must be funded.

Program size has minimal impact on the level of effort associated with processing redesignation applications, since the Office of Designation has to review and assess the same factors and the same documents.

Regulatory Findings

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government supervises programs that invite foreign nationals to come to the United States to participate in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government often has been, and likely will be, held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems.

The purpose of this rulemaking is to set the fees that will fund services provided by the Exchange Visitor Program Office of Designation to more than 1,400 sponsor organizations and 300,000 Exchange Visitor Program participants. These services include oversight and compliance with program requirements, as well as the monitoring of programs to ensure the health, safety and well-being of foreign nationals entering the United States (many of these exchange programs and participants are funded by the U.S. Government) under the aegis of the Exchange Visitor Program and in furtherance of its foreign relations mission. The Department of State represents that failure to protect the health and well-being of these foreign nationals and their appropriate placement with reputable organizations will have direct and substantial adverse effects on the foreign affairs of the United States.

Although the Department is of the opinion that this rulemaking is exempt from the rulemaking provisions of the APA, the Department published this rulemaking as an NPRM and solicited comments, without prejudice to its determination that this rulemaking concerns a foreign affairs function of the Department.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above, the Department believes that this final rule is exempt from the provisions of 5 U.S.C. 553. This final rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272

Unfunded Mandates Reform Act of 1995

This rulemaking will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175--Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

Based on the criteria of 5 U.S.C. 804(2), the Department does not believe this rulemaking will have an annual effect on the economy of \$100,000,000 or more. The Department estimates that approximately 60 government, academic and private sector programs apply for designation annually, and approximately 700 of the currently-designated sponsors apply for redesignation annually. Therefore, 760 organizations will be required to pay the application fee, which amounts to a total of \$3,026,320, an increase of \$974,320 from the current application fee of \$2700 (\$3,026,320 -

\$2,052,000). This is the only monetary effect on the economy that the Department is able to identify.

A rule is also considered “major” if it will result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions. The Department does not anticipate that this rule will have any effect at all on those categories. Finally, a rule is considered major if it will have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets. The Department knows of no adverse effects, much less significant adverse effects, on any of those categories.

This rulemaking has been found not to be a major rule within the meaning of 5 U.S.C. 804.

Executive Order 13563 and Executive Order 12866

As discussed above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are generally exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this final rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

The Department has examined the economic benefits, costs, and transfers associated with this rule, and declares that educational and cultural exchanges are both cornerstones of U.S. public diplomacy and an integral component of U.S. foreign policy. The benefits of these exchanges to the United States and its people are invaluable and cannot be monetized; in the same way, even one exchange visitor having a bad experience or, worse, being mistreated, will result in embarrassment and incalculable harm to the foreign policy of the United States. Therefore, the Department is of the opinion that the benefits of this rulemaking outweigh its costs.

Executive Order 12988

The Department has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing

Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405-0147, expiring on November 30, 2013.

List of Subjects in 22 CFR Part 62

Cultural exchange program.

Accordingly, 22 CFR Part 62 is amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451 et seq.; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107-56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543.

2. Section 62.17 is revised to read as follows:

§ 62.17 Fees and charges.

(a) Remittances. Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) Amounts of fees. The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS-3036)--\$3,982.00.

(2) For filing an application for exchange visitor status changes (i.e., extension beyond the maximum duration, change of category, reinstatement, reinstatement-update SEVIS status, ECFMG sponsorship authorization, and permission to issue) --\$367.00.

May 8, 2013

(Date)

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Bureau of Educational and Cultural Affairs,
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